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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

IRA JAY DANIELS,

Defendant and Appellant.

B250362

(Los Angeles County
Super. Ct. No. TA070307)

APPEAL from an order of the Superior Court of Los Angeles County, Arthur M. Lew, Judge. Affirmed.

Ira Jay Daniels, in pro. per.; Jonathan Steiner and Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Ira Jay Daniels, who was convicted of one count of premeditated murder (Pen. Code, § 187, subd. (a))¹ with true findings he personally used and discharged a firearm that caused great bodily injury and death (§ 12022.53, subd. (d)), and that he had personally used and discharged a handgun (§ 12022.53, subds. (b), (c)), appeals a postjudgment order correcting nunc pro tunc his abstract of judgment to reflect 364 days of presentence custody credits. Defendant's arguments in this appeal are directed at his judgment of conviction, which was the subject of a prior appeal. He contends (1) he was denied his Sixth Amendment right because his counsel was not present when the trial court responded to the jury's questions about the jury instructions; (2) the trial court erred in failing to grant his retained lawyer an extension of time because she did not have all necessary discovery, refused to permit defendant to discharge his retained attorney and grant an extension to find another attorney, and appointed a public defender for defendant; and (3) trial counsel was ineffective for failing to request further instruction on manslaughter as a lesser included offense, and appellate counsel was ineffective for failing to raise these issues in their opening brief in this appeal. We affirm.

FACTUAL BACKGROUND

On December 26, 2003, an information was filed against defendant, alleging that on June 1, 2003, he had committed the willful, deliberate, and premeditated murder of Sheldon Watkins. (§ 187, subd. (a).) The information further alleged that defendant had personally used and discharged a firearm that caused great bodily injury and death (§ 12022.53, subd. (d)), and that defendant had personally used and discharged a handgun (§ 12022.53, subds. (b), (c)). Defendant pleaded not guilty to the charges and denied the special allegations. After a jury trial, on July 2, 2004, the jury found defendant guilty as charged, and found true the special allegations. On September 16, 2004, the trial court sentenced defendant to imprisonment for 25 years to life for the offense of murder, and

¹ All further statutory references are to the Penal Code unless otherwise indicated.

imposed a consecutive term of 25 years to life pursuant to section 12022.53, subdivision (d). We affirmed defendant's conviction on appeal. (*People v. Daniels* (Nov. 4, 2005, B178169) [nonpub. opn..])

On April 23, 2013, defendant filed a motion in the trial court for a correction of the record in the trial court pursuant to section 1237.1. Defendant asserted that the trial court failed to accurately calculate his presentencing credits at the time of sentencing. The trial court awarded defendant 362 actual days presentencing credit, but he was entitled to 364 actual days based upon his arrest in Tennessee on September 19, 2003. In support, defendant provided a copy of the reporter's transcript of his sentencing hearing, at which time the court asked his counsel whether he had calculated defendant's sentencing credits. Counsel responded that she had not and then stated, "362 days." The court sentenced defendant and gave him presentencing credits of 362 days of actual custody.

On May 24, 2013, the court called the case pursuant to defendant's written motion and noted that defendant was not present and was not represented by counsel. The court ordered the minute order containing defendant's sentence be amended nunc pro tunc to show actual and total presentence custody credits of 364 actual days, and directed the clerk to prepare an amended abstract of judgment.

An amended abstract of judgment filed May 30, 2013, showed defendant's presentence custody credits to be 364 actual days.

On July 18, 2013, defendant filed a notice of appeal from the trial court's postjudgment order correcting his presentence custody credits. That appeal is the focus of this decision.

PROCEDURAL HISTORY

We appointed counsel to represent defendant on appeal. After examination of the record, on October 16, 2013, counsel filed an opening brief raising no issues and asking this court to independently review the record. On October 17, 2013, we advised defendant he had 30 days within which to personally submit any contentions or issues he wished us to consider.

On January 31, 2014, after an extension of time, defendant filed a supplemental brief in which he argued that because the trial court's initial miscalculation of presentence custody credits and failure to permit the defendant to be present at sentencing resulted in an unauthorized sentence creating a jurisdictional defect, any error is subject to judicial correction whenever discovered. Thus, he raises arguments directed at his conviction, contending that he was denied his Sixth Amendment right to counsel to be present when the jury asked the court questions about the jury instructions. During deliberations, the jury asked questions about the murder instructions, yet the record does not demonstrate the trial court notified him or his counsel of the jury's questions. Further, defendant contends trial counsel was ineffective for failing to further instruct the jury on manslaughter as a lesser included offense. Defendant also contends the trial court erred in failing to grant his retained lawyer an extension of time because she did not have all necessary discovery. After being denied an extension, defendant's lawyer had a panic attack and was taken away by paramedics, yet the court refused to permit defendant to discharge his retained attorney and grant an extension to find another attorney; instead, the trial court appointed a public defender for defendant. Lastly, defendant contends his appellate counsel was ineffective for failing to raise these issues in his opening brief in this appeal.

We have examined the entire record and are satisfied that defendant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.) Defendant's claims raised in his supplemental brief relating to his judgment of conviction were addressed in a prior appeal and are not cognizable in this appeal from the postjudgment order recalculating his sentencing credits. (*In re Carpenter* (1995) 9 Cal.4th 634, 646 [appellate jurisdiction limited to four corners of record on appeal].) Any claims not addressed in his prior appeal may be cognizable through the vehicle of a habeas corpus petition where appropriate evidence may be presented. (See *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266–267.)

DISPOSITION

The order is affirmed.

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JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.